

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICHARD MASEPHOL,

Plaintiffs,

ORDER

v.

14-cv-186-wmc

WEYERHAEUSER COMPANY, 3M COMPANY,
METROPOLITAN LIFE INSURANCE
COMPANY, and OWENS-ILLINOIS INC.,

Defendants.

In this action, plaintiff Richard Masephol brings claims against defendants arising out of his exposure to asbestos and a related disease, malignant mesothelioma. Before the court are two motions to dismiss. In the first, defendant Weyerhaeuser Company, the former owner of a door manufacturing plant where Masephol worked and asbestos fireproofing products were produced, moves to dismiss negligent nuisance and intentional nuisance claims brought against it on the theory that those claims are barred by Wisconsin's Workers' Compensation Act. (Dkt. #57.) In the second motion, defendant Owens-Illinois Company seeks dismissal of product liability claims premised solely on its licensing of a patent claiming a fireproof door. (Dkt. #50.) The court will grant both motions for the reasons set forth in its opinion and order in *Boyer v. Weyerhaeuser*, No. 14-cv-286 (W.D. Wis. August 22, 2014).¹

¹ The court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a). Plaintiff Richard Masephol is a citizen of Wisconsin. (1st Am. Compl. (dkt. #73-1) ¶ 1.) As explained in the *Boyer* opinion the named defendants are citizens of states other than Wisconsin. The court will dismiss the "unknown insurers" as defendants.

ORDER

IT IS ORDERED that:

- 1) defendant Weyerhaeuser Company's motion for judgment on the pleadings (dkt. #57) is GRANTED. Count III and IV of plaintiff's first amended complaint are dismissed with prejudice and defendant Weyerhaeuser is dismissed from this action;
- 2) defendant Owens-Illinois Inc.'s motion to dismiss (dkt. #50) is GRANTED. Counts I and II of plaintiff's first amended complaint premised on Owens-Illinois's role as a licensor are dismissed with prejudice;
- 3) plaintiff may have until September 22, 2014, to file an amended complaint alleging specific facts necessary to state a claim against Owens-Illinois, provided he can do so in good faith; and
- 4) plaintiff's motions for leave to file sur-reply (dkt. ##77, 80) are GRANTED.

Entered this 22nd day of August, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge